

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICHAEL J. MONA, JR.,

Plaintiff

v.

CV SCIENCES, INC.,

Defendant

Case No.: 2:21-cv-02196-APG-DJA

**Order to Supplement Briefing**

Defendant CV Sciences, Inc. moves to dismiss plaintiff Michael J. Mona's complaint. CV Sciences argues that Mona's claims are barred because they are compulsory counterclaims that Mona should have asserted in a prior California state court action that CV Sciences brought against Mona. That action is stayed while the parties pursue arbitration. Mona argues that he can bring his claims in a separate federal case because they do not arise out of the same factual transaction or occurrence as the California case. Because neither party has sufficiently briefed the applicable law, I order each party to file a supplemental brief.

To determine whether a counterclaim was compulsory in a state court case, I look to the law of the state in which the state case was filed. *Pochiro v. Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1249 (9th Cir. 1987); *Fox v. Maulding*, 112 F.3d 453, 456-57 (10th Cir. 1997); *Vashisht-Rota v. Howell Mgmt. Services*, 837 Fed. Appx. 602, 602 (9th Cir. 2021). Here, California law applies. Under California law, if a defendant fails to assert a compulsory counterclaim against the plaintiff at the time the answer is served, that counterclaim is waived. Cal. Code of Civil Procedure § 426.30(a). However, a defendant who fails to raise a compulsory counterclaim does not waive that claim if he never filed an answer in the action. *Id.* § 426.30(b)(2).

1 Neither party addressed this law or indicated whether Mona filed an answer in the state  
2 court case. Consequently, I direct the parties to file supplemental briefs addressing this issue.

3 I THEREFORE ORDER that by September 2, 2022, each of the parties shall file a  
4 supplemental brief of no more than five pages to address whether the counterclaims were  
5 compulsory under California law.

6 DATED this 16th day of August, 2022.



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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE